The step that follows next the Commissioner has to take is under Regulation 7. He has to enquire in writing from the Ministry whether liability is admitted on the claim of the applicant. This step was not taken. Had it been taken, one of two situations would have arisen. The Ministry may admit liability, in which event the Commissioner has to assess the compensation payable to the applicant. On the other hand, the Ministry may deny liability, on the ground that the injury of the applicant did not arise out of his employment. Then the Commissioner would have to, in my judgment, inquire into the matter under section 24(1) of the Act for the reason that he has to issue a notice of assessment under section 24(2) of the Act. Where the Commissioner finds for the applicant the notice of assessment will state the amount of the compensation payable to him. Where, however, the finding is in favour of the Ministry the notice will show a nil assessment. Whatever be the finding of the Commissioner, for or against the applicant, he has to issue a notice of assessment. This is another step the Commissioner has not complied with which has given rise to these proceedings. The failure to issue the notice of assessment has deprived the applicant from raising an objection under section 25 of the Act. It is under this section that the Commissioner has to conduct a hearing of the case and "hand down a decision". It is only then can it be said that there is a decision from the Commissioner. From this decision either party may appeal to the High Court under section 29 of the Act. For these reasons, I am of the view that it was proper for the applicant to have come to this court for an order of *mandamus* and I accordingly granted the order sought in the motion which includes costs.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

RE "KOTA PAHLAWAN"; "KOTA PAHLAWAN", OWNERS OF CARGO v. "KOTA PAHLAWAN", OWNERS OF SHIP

[O.C.J. (Sinnathuray J.) October 9, 1981]
[Singapore — Admiralty in Rem No. 190 of 1980]

Practice and Procedure — Admiralty action — Action in rem — Indorsement — Leave to amend — Whether new party had been substituted — Whether defendants were deprived of defence of limitation — Carriage of Goods by Sea Act, 1972, art. III r.6 of Schedule — Rules of the Supreme Court 1970, Appendix A Form 155, O.6 r.4 & O.70 r.1(1).

Shipping Law — Action in rem — Indorsement of plaintiffs' address — Whether amendment could be allowed.

This was an appeal by the defendants against the decision of the Assistant Registrar giving the plaintiffs leave to amend the indorsement of the address of the plaintiffs in the Writ of Summons. The defendants contended that by amending the indorsement of address, a new party had been substituted and that this would deprive the defendants of the defence of limitation that had been available to them under Art. III Rule 6 of the Schedule to the Carriage of Goods by Sea Act, 1972.

Held, dismissing the appeal: (1) Form 155 in Appendix A of the Rules of the Supreme Court provides and confirms the practice that when the parties in an action *in rem* are owners of a ship or owners of cargo, they need not be identified by name, but can be described generally, as in the present case;

(2) in an admiralty action the paramount interest is the *rem*, be it ship or cargo or other things, and not the owners of the *rem;*

(3) in an admiralty action *in rem* where the plaintiffs are represented by solicitors, the indorsement as to the address of the plaintiffs is hardly of any consequence. Hence, in the present case, a mistake in the indorsement is an irregularity which a court, in the exercise of its powers to regulate its own process, would put right;

(4) the defendants were in no way prejudiced by the address of the consignors in the indorsement instead of that of the consignees. It is for the reason that from the time of the issue of the writ the consignees were a party as plaintiffs in this action;

(5) the defence of limitation was never available to the defendants in this action.

Case referred to:-

(1) *The Duke of Buccleuch* [1892] P.D. 201.

ADMIRALTY *IN REM.*

J. Prakash for the appellants/defendants.

K. Gopalan for the respondents/plaintiffs.

Sinnathuray J.: This is an appeal by the defendants against the decision of the Assistant Registrar giving the plaintiffs leave to amend the indorsement of the address of the plaintiffs on page 3 of the Writ of Summons. From:

"This Writ was issued by Wu & Raja, of No. 205 Colombo Court, Singapore, Solicitors for the said plaintiff(s) whose address is at 34, Lorong 32, Geylang Road, Singapore 14."

To:

"This Writ was issued by Wu & Raja, of No. 205 Colombo Court, Singapore, Solicitors for the said plaintiff(s) whose address is at Jalan Sunan Ampel, No. 12, Jakarta, Indonesia and is a partnership firm with limited liability and registered according to the laws of Indonesia."

The Writ of Summons relates to an admiralty action *in rem.* The plaintiffs are "The Owners of cargo lately laden on board the ship or vessel "KOTA PAHLAWAN". The defendants are "The Owners of the ship or vessel "KOTA PAHLAWAN"." In the indorsement of claim the plaintiffs claim as owners of certain goods or indorsees or holders for value of the bill of lading in respect of the goods shipped on board the defendants' vessel "KOTA PAHLAWAN" for carriage from Singapore to Indonesia against the defendants damages for breach of contract and/or breach of duty and/or negligence of the defendants, their servants or agents in respect of damage and/or short delivery of some of the goods.

The Writ of Summons was issued on April 10, 1980. Service of the Summons on the solicitors for the defendants was deferred because there was a banker's guarantee furnished by the defendants through their solicitors to Universal Union Trading Co. Pte. Ltd. c/o the plaintiffs' solicitors. Universal Union were the shippers and the consignors of the goods.

On January 23, 1981, the writ together with the Statement of Claim were served on the solicitors for the defendants. On February 20, the plaintiffs obtained leave to enter a judgment in default of appearance. On March 5 judgment was entered against the defendants for the amount quantified in the Statement of Claim.

On March 16, the defendants moved the court to set aside the judgment. One of the grounds raised at that hearing, though not the ground on which I set aside the judgment, was that Universal Union were not, at the time the cause of action arose, the owners of the goods, nor were they the holders or indorsees of the bill of lading of the goods. It was therefore said that they were not entitled to bring this action.

At the hearing of this appeal, the defendants relied on the same ground. It was contended for the defendants that by amending the indorsement of address, a new party has been substituted as the plaintiffs in the action, and this has deprived the defendants of the defence of limitation that had been available to them under Article III Rule 6 of the Schedule to the Carriage of Goods by Sea Act, 1972 (No. 30 of 1972).

The first point to note is that an admiralty action *in rem,* like an action *in personam,* is commenced by a writ of summons except that there is a special form for an action *in rem* in Form 155 in Appendix A of the Rules of the Supreme Court. The Form provides, indeed it confirms, the practice that when the parties in an action *in rem* are owners of a ship, and I include owners of cargo, they need not be identified by name, but can be described generally as has been done in this case.

Next to be noted is, when it comes to the giving of the address of the parties, in a writ *in personam,* in the case of a defendant his address is a necessary part of the writ and must be correctly stated. As for defendants in an admiralty *in rem* action, Form 155 provides,

"To:

The (owners of and other) persons interested in the ship of the port of (or cargo, etc., as may be ."

that it is sufficient to name the port of the registration of the ship without giving any other particulars. And as for plaintiffs, Form 155 provides for an indorsement as to solicitor and address. It is a requirement under Order 6 rule 4. This rule applies to admiralty proceedings by virtue of rule 1(1) of Order 70 which provides that the rules in Order 70 must be read with the other rules in the Rules of the Supreme Court.

In Order 6 rule 4, there is a two-fold purpose for an indorsement as to solicitor and address in a writ of summons. One is it provides an address for service of the plaintiff, an address of a place within the jurisdiction where documents for him may be delivered or sent. The other is, where the writ is issued by a solicitor, it evidences that the writ was issued by him or with his authority or privity. I have not been able to find in any book on civil procedure or any authority that says that an indorsement as to solicitor and address serves any other purpose. It was a novel submission that was made to me for the defendants that from the indorsement of address one can identify who the plaintiffs are in the action.

Before I seek to answer the submission, the following material facts are relevant. The address, No. 34, Lorong 32, Geylang Road, Singapore 14, in the indorsement is the address of Universal Union. They are the consignors of the goods. It is conceded for the plaintiffs that at the material time Universal Union were not the owners of the goods. The solicitors for the plaintiffs admit that they had made an error in the indorsement as to address. But it is said that at the time when the writ was issued they did not have the address of the consignees. No explanation was given but I infer that the insurers who instructed the solicitors did not at that time have that information or had not furnished it to their solicitors.

On these facts, for the plaintiffs, it was submitted that the description "the owners of the cargo ..." gathers as plaintiffs all persons who have an interest in the cargo. When on the instructions of the insurers this subrogated action was commenced, the shippers would be one of the persons interested in the cargo. Therefore the solicitors were not to be faulted for having at that time given the address of Universal Union as the address of the plaintiffs in the indorsement. Next, it was submitted that the fact that the address of the consignors only was given in the indorsement cannot limit or restrict the persons who are plaintiffs within the general description "the owners of the cargo ...". The third point that was made was when one looks at the indorsement of claim, it is made abundantly clear who the plaintiffs are in this action. As the consignees are included in the claim, it was submitted that it was wrong to say that by the amendment made to the indorsement as to address the plaintiffs have substituted a new party. Finally, I was referred to the case of the *Duke of Buccleuch.*[1]

That case was an action *in personam* for damage by collision between the sailing ship "Vandalia" and the steamship "Duke of Buccleuch". The writ was entitled "Between George F. Smith and Others, plaintiffs, and the Eastern Steamship Company, Limited, defendants". It was indorsed with the following claim: "The plaintiffs, as owners of the ship or vessel "Vandalia", of the port of St. John's, New Brunswick, the owners of her cargo and her master and crew, claim compensation against the Eastern Steamship Company, Limited, the owners of the steamship "Duke of Buccleuch", for the loss of the said vessel "Vandalia", her cargo and crew's effects, occasioned by a collision which took place in the English Channel ...". The writ was stated to be "issued by Thomas Cooper & Co., of No. 21, Leadenhall Street, in the City of London, solicitors for the said plaintiffs, who reside at New Brunswick and other places".

When the action came on for hearing, counsel for the defendants objected that the names and addresses of the plaintiffs had not been disclosed, and as there was a counterclaim, the defendants would not, in the event of obtaining judgment, be able to show against whom they had obtained it, so as to be able to enforce it. Butt J. held that the writ as issued was not a sufficient compliance with the rules under the Judicature Acts. But he allowed the action to proceed on the solicitors for the owners of the ship undertaking to supply the names of all the plaintiffs. The writ was then amended, and was entitled "Between George F. Smith (fourteen other names), owners of the ship "Vandalia", Funck, owners of her cargo, and the crew of the said ship "Vandalia", plaintiffs,

and the Eastern Steamship Company, Limited, defendants."

After the case had gone to the House of Lords where the defendants' vessel was found alone to blame, it was discovered at the time of the assessment of damages by the Registrar that a mistake had been made that though the goods had been invoiced to Henry Funck & Co. no interest in the cargo had passed to them. The owners of the cargo then took out an application for an order that the name of Meissner Ackerman & Co. be added as the plaintiffs or substituted for Funck. Jeune J. made an order in favour of the cargo owners, and the Court of Appeal upheld his decision.

The facts in the *Duke of Buccleuch* fall into two parts. The facts in part one of the proceedings that were before Butt J. were similar to the facts in the present case. In that case, not only were the addresses of plaintiffs not given in the indorsement as to address, the names of many of the plaintiffs were omitted in the writ. Yet at the trial the only objection taken was a failure to disclose. No objection was taken similar in kind made to me that the plaintiffs were seeking to add new parties. The best the defendants could have hoped for in that case was a stay of proceedings. But the trial went on on the undertaking given by the solicitors for the plaintiffs.

The facts in part two of the proceedings in the *Duke of Buccleuch* were not relevant to the facts that were before me. There the cargo owners as plaintiffs had a serious problem, a wrong party had been named in the writ. The trial had concluded and the appeals had been exhausted. Nothing of that kind arose in the present case. But what is instructive is that in that case Jeune J. exercised his power under Order 16 rules 2 and 11 which deal with misjoinder and amendment of pleadings and substituted a new party as plaintiffs.

At the conclusion of the hearing I accepted the cogent submissions for the plaintiffs. I have now dealt with the *Duke of Buccleuch* at some length as it is illustrative of some aspects of practice and procedure in admiralty proceedings. I have also sufficiently shown that parties in admiralty actions are differently considered from parties in other civil actions where proceedings are commenced by an ordinary writ of summons. The reason I venture to give is that in an admiralty action the paramount interest is the *rem*, be it ship or cargo or other things, and not the owners of the *rem*.

On the subject of indorsement as to solicitor and address, having regard to the purposes of it, I am of the view that in an admiralty action *in rem* where plaintiffs are represented by solicitors, the indorsement as to the address of the plaintiffs is hardly of any consequence. I am also of the view that a mistake in the indorsement is an irregularity which a court, in the exercise of its powers to regulate its own process, would put right.

Finally, I am of the view that the defendants were in no way prejudiced by the address of the consignors in the indorsement instead of that of the consignees. It is for the reason that from the time of the issue of the writ the consignees were a party as plaintiffs in this action. The defence of limitation was never available to the defendants in this action.

For these reasons, I dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Wu & Rajah.*